

24.08.2021
Sl. No.4
sn

W.P.A. No. 12927 of 2021

**Infiz Alam & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Ekramul Bari
Mr. Syed Mansur Ali
Mr. Sk. Imtiaz Uddin

...for the Petitioners

Mr. L.M. Mahata
Mr. A.P. Lahiri
Mr. S.P. Lahiri

...for the State.

Despite service, none appears on behalf of the Pradhan and Upa-Pradhan. Let affidavit of service be taken on record. This matter is disposed of in their absence as no mandatory directions are being passed affecting their rights.

The writ petitioners are the requisitionists, who are aggrieved by the order dated August 6, 2021 issued by the prescribed authority rejecting two separate requisitions brought on August 3, 2021, expressing their desire to remove the Pradhan and Upapradhan respectively, due to lack of confidence.

The prescribed authority after receiving the said requisitions, rejected the said motions by citing Rule 5(4) of Chapter II of the West Bengal Panchayat(Gram Panchayat Administration) Rules, 2004.

It is the contention of Mr. Bari, learned advocate appearing on behalf of the requisitionists that the prescribed authority has acted in a *mala fide* manner only to frustrate the democratic rights of the requisitionists to remove the Pradhan and Upapradhan. He submits that a single requisition notice and a single meeting, to remove both office bearers is not permissible, but, in this case, the requisitionists brought two separate requisitions, both dated August 3, 2021 and the prescribed authority should not have rejected the requisitions by misinterpreting the rules. It is further submitted that the prescribed authority has acted in a manner contrary to the statute just to favour the Pradhan.

Mr. Mahata, learned advocate for the State respondents submits that as there were two separate requisitions the meeting could have been held separately one after the other or on separate dates. He fairly submits that the prescribed authority has misunderstood the provisions of the rules.

Having considered the rival contentions of the parties, this Court is of the opinion that the prescribed authority erred in holding that the motions do not conform to the Rule 5(4) of Chapter II of the West Bengal Panchayat(Gram Panchayat Administration) Rules, 2004. The said rule is quoted below :-

“ There shall be no meeting with agenda for removal of more than one office bearer in a Gram Panchayat

any notice issued for removal of more than one office bearer shall be void *ab initio*."

The rule does not permit a single meeting or a single requisition for removal of more than one office bearer. In my opinion, the provision for removing an elected representative such as the Pradhan is of fundamental importance, to ensure the democratic functioning of the institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives. These institutions must run on democratic principles. In democracy, all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. If the Pradhan has lost support of the majority of the members, he cannot remain in office for a single day.

In the decision of *Ujjwal Kumar Singha v. State of W.B.* reported in 2017 SCC OnLine Cal 4636, it was held that:

"5. The entire impugned judgment and order is supported with cogent reasons and there is no palpable infirmity noticed therein which would warrant any interference in an Intra-Court Mandamus Appeal. It appears that the appellant/writ petitioner resorted to taking shelter under the high prerogative jurisdiction of the High Court under Article 226 of the Constitution of India only for the purpose of thwarting the well-established democratic principles which govern the running of public institutions such as a Gram Panchayat, being at the lowest tier of self-governance at the village level in the three-tier Panchayati Raj System. In this context, one may take notice of the observations made by this Court in *Farida Bibi v. The State of West Bengal* reported in 2016 (5) CHN (Cal) 258, while following the observations made by the Supreme Court in *Usha Bharti v. State of U.P.* reported in (2014) 7 SCC 663 : AIR 2014 SC 1686, wherein it was observed to the effect that it is the fundamental right of democracy that those who have been elected can also be removed by

expressing, 'No Confidence Motion' for the elected person. In an institution which runs on democratic principles, a person can continue to be its head so long he/she enjoys the confidence of the persons who comprised such a body. This is the essence of democratic republicanism which was taken note of by the Supreme Court in Usha Bharti (supra).

6. The appeal has no merit and is liable to be dismissed along with the application for stay with exemplary costs assessed at 500 G.Ms. which shall be deposited with the State Legal Services Authority for being earmarked for utilisation by the Mediation and Conciliation Committee of the High Court."

In the decision of this court, *In re Mihir Mondal* reported in (1994) 1 CHN 423, it was held that two separate requisitions should be brought and two separate meetings should be held for removal of the Pradhan and Upapradhan. It was held that:

"11. Apart from the above, I am of the view that Ss. 12 and 16 of the West Bengal Panchayat Act, 1973, do not contemplate removal of the Pradhan and Upa-Pradhan in one meeting and two separate meetings are required to be held for the said purpose upon two separate notices having been given in support thereof.

Having regard to the above, this writ application must succeed and is, accordingly, allowed. The impugned notice for holding the requisition meeting, being annexure 'B' to the writ petition, is hereby quashed along with the regulation adopted therein.

12. Needless to say, any steps taken pursuant to such resolution must also stand quashed.

13. The prescribed authority is directed to see that the petitioner No. 1 is restored to the post of Pradhan and the petitioner No. 2 is restored to the post of Upa-Pradhan and the charge of the office is made over to them forthwith. This will not, however, prevent the members of the Gram Panchayat from taking further steps for removal of the Pradhan and the Upa-Pradhan in accordance with law."

In this case, the petitioners had made this mistake on the earlier occasion and brought a single requisition for removal of both the Pradhan and Upapradhan. On his ground, the requisition was set aside by this court granting liberty to the petitioners to bring two separate requisitions and the prescribed authority was directed to act in accordance with law. In this case, the requisitionists as per the directions of this Court brought two separate motions/requisitions for removal of the Pradhan and Upapradhan respectively.

The prescribed authority has acted contrary to law and on a misconception of the rules.

The order dated August 6, 2021 is set aside and quashed.

The prescribed authority cannot deny the democratic rights of the petitioners to bring two separate motions of no confidence against each of the office bearers, in accordance with law.

Although Mr. Bari submits that the prescribed authority should be directed to consider the requisition afresh in accordance with law, this Court is of the opinion that by the time the prescribed authority records his satisfaction under Section 12(2) of the West Bengal Panchayat Act, 1973 and thereafter proceeds with the issuance of notice, the statutory

time limit under Sections 12(3) and 12(4) of the said Act will expire.

Under such circumstances, both the requisitions dated August 3, 2021 are set aside with liberty to the petitioners to bring separate requisitions afresh for removal of the Pradhan and Upapradhan. Once these requisitions are brought, the prescribed authority shall act in terms of the provisions of Sections 12(3), 12(4) onwards and reach the requisitions to their logical conclusion. The prescribed authority shall strictly abide by the time limit prescribed by the statute.

This Court cannot help but observe that the prescribed authority has disregarded the order of this Court passed on an earlier occasion and has failed to abide by the same.

It is expected that the prescribed authority shall act as is expected from a statutory authority having power and obligations under the statute and exercise his due diligence while performing his duties in accordance with law. If necessary, the prescribed authority may seek police protection, which shall be rendered without any delay or laches on the part of the police authorities. It is also made clear that if the Pradhan tries to evade service of requisition then the requisitionists shall be entitled to serve the same in his office through his secretary or assistant and if, such service is not accepted, then the requisitionists will be entitled to paste the

same at the office of the Pradhan in addition to sending the same by registered post to the residence of the Pradhan.

This writ petition is disposed of.

There will be, however, no order as to costs.

All parties are act on the basis of the server copy of this order.

(Shampa Sarkar, J.)